

Recall Elections

The power of the voters to remove an elective officer by recall is set forth in the California Constitution Article II, §§ 13-19, and the California Elections Code §§ 11000 et seq. The Political Reform Act regulates campaign activity in a recall election. All candidates and committees that raise and spend funds in connection with a recall election have full reporting and disclosure obligations under the Act. In addition, Proposition 34 has added new provisions applicable to state officials and candidates involved in a recall effort.

This fact sheet is intended to alert you to the provisions of the Political Reform Act as applied to recall elections. This fact sheet is not meant to be a comprehensive guide to your filing obligations, whether you are the subject of a recall, a replacement candidate, or a proponent or opponent of a recall. In addition, provisions of the state election law and local laws may affect recall elections, and you should check with the Secretary of State or your county or city clerk about these.

Recalls Are Treated Like Ballot Measures

Recall elections are unique because they have both the characteristics of a ballot measure and a candidate election. Recalls fall within the definition of a “measure” under section 82043¹ of the Act. Therefore, state law treats recall elections as ballot measures with the “issue” before the voters being, “Shall the officeholder be recalled from office?”

Proponents’ Filing Obligations

An important consequence of the fact that recalls are treated as ballot measures is that a person or group of persons who raises or spends more than \$1,000 for a potential recall attempt will not be a “committee” pursuant to section 82013 until the target of the recall is served with a notice of intention to circulate a recall petition and the notice is filed and published or posted pursuant to Elections Code sections 11006 and 11021. However, once this notice is given, the committee must report on its first campaign statement all contributions received and expenditures made for the purpose of influencing the electorate to sign a recall petition or to vote for or against a recall election regardless of when the contributions or expenditures were made.

Officeholders’ and Replacement Candidates’ Filing Obligations

An officeholder who is the subject of a recall must disclose all contributions received and expenditures made in anticipation of a recall election, even if the officeholder has not been served with notice of intention to circulate a recall petition.

¹ Citations contained in this fact sheet refer to the Political Reform Act, Cal. Gov. Code §§81000-91014, and to Fair Political Practices Commission regulations, contained in Title 2, Division 6 of the California Code of Regulations, unless otherwise stated. You should not rely solely on this fact sheet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations, available on the FPPC website, www.fppc.ca.gov.

A replacement candidate must also disclose all contributions received and expenditures made pursuing election even if the subject of the recall has not been served with notice of intention to circulate a recall petition.

A committee's filing obligations during a recall election are as follows: generally speaking, proponents of a recall, the subject of the recall, and replacement candidates must file two pre-election campaign statements and one post-election campaign statement. In addition, candidate controlled committees must make the usual semi-annual filings, and ballot measure committees must make the required quarterly filings.

The officeholder or replacement candidate has several options regarding what campaign account to use so long as they are consistent with the one bank account rule and other fundraising restrictions of Proposition 34 or local law. He or she may use his or her existing bank account (if any), an account formed for a future election (if any), or establish a separate ballot measure committee to oppose the recall. Section 85315 specifically provides that a state officer who is the target of a recall may open a new campaign committee and account to oppose the recall. All of these committees would be candidate controlled, and forms 410 (statement of organization) and 501 (candidate intention) must be on file.

Application of Contribution Limits to State Recall Elections

Proposition 34 enacted contribution and voluntary expenditure limits for state candidates. However, section 85315 of the Act, added by Proposition 34, specifically states that the contribution and voluntary expenditure limits of the Act do not apply to an elected state officer raising funds to oppose a recall measure. In addition, because a recall is considered a measure under state law, no contribution limits apply to the proponents of the recall measure.

Under the current elections code, the recall measure and the selection of a replacement candidate, if necessary, are consolidated on the same ballot. However, they are two separate questions. The first question is, "Shall the officeholder be recalled from office?" If that question is answered by voters in the affirmative and the recall succeeds, the second question is, "Which candidate shall be elected to fill the vacant office?" The individuals who appear on the ballot to replace the elected officer should the recall succeed are "candidates" for elective state office as defined in section 82007 of the Act. The contribution and voluntary expenditure limits applicable to state candidates under the Act, added by Proposition 34, apply to such replacement candidates.

Questions

1. *How does a committee determine its filing schedule?* The Commission's manuals for candidates and committees explain how to compute the filing schedule for election dates *other* than the normal election dates. Also, because the date of the election can vary, the filing schedule may be awkward depending on a candidate's or committee's existing filing obligations, if any. Because of this possibility, a candidate or committee may ask the FPPC's technical assistance division for a filing schedule and may ask the Commission for written permission to combine reports and statements if certain reports or statements overlap.

2. *May a single campaign committee be formed to oppose the recall of two or more officeholders in a recall election?* Yes. This committee would be primarily formed. If the committee is controlled by a candidate or officeholder, the committee would also be a controlled committee.

3. *May a local jurisdiction impose contribution limits on the subject of a recall election and replacement candidates?* Nothing in the Act prohibits a local jurisdiction from imposing contribution limits on the subject of a recall election or a replacement candidate, so long as the local ordinances do not prevent anyone from complying with the Political Reform Act. (*Angus Advice Letter*, No. A-97-173.)

4. *May a general purpose committee use its funds to support or oppose a recall effort?* Yes.

5. *What may a candidate controlled committee do with remaining funds after the recall effort is finished?* The funds of a candidate controlled committee become surplus funds under section 89519 after a recall. Section 85315(b) provides that after a recall petition or election is finished, an elected state officer's recall committee must wind down its activities. Its remaining funds are treated as surplus under section 89519(b) and must be spent within 30 days.

6. *What may a ballot measure committee (formed primarily to support or oppose a recall effort) do with funds remaining after the recall effort is finished?* Generally speaking, the committee may spend its funds on anything that is reasonably related to a political, legislative, or governmental purpose, if there is no personal benefit to an officer of the committee. Also, if the committee would like to remain in operation, it may do so. However, the statement of organization may have to be amended to reflect the new purpose of the committee.

Fair Political Practices Commission

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